ERC INDUSTRIES

IBLA 90-497 Decided November 17, 1992

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, upholding an order of the Platte River Resource Area Manager requiring appellant to submit a notice of intent to plug and abandon well No. 44-31. WYW 9092A.

Affirmed.

1. Environmental Quality: Generally--Oil and Gas Leases: Production

> Pursuant to 43 CFR 3162.3-4(a), an operator shall promptly plug and abandon, in accordance with a plan first approved in writing or prescribed by BLM, each newly completed or recompleted well in which oil or
> gas is not encountered in paying quantities or which, after being completed as a production well, is demonstrated to the satisfaction of the authorized officer
> to be no longer capable of producing oil or gas in paying quantities, unless BLM shall approve the use
> of the well as a service well for injection to recover additional oil or gas or for subsurface disposal of produced water. An order to plug and abandon a well will be affirmed where the record shows that the well has not produced for more than a decade and the operator's plans for a waterflood program have not been implemented despite over 18 months of delay awaiting favorable economic conditions.

APPEARANCES: Joseph R. Mazzola, General Manager, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

ERC Industries (appellant) has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated July 6, 1990, upholding an order of the Platte River Resource Area Manager requiring appellant to submit a notice of intent to plug and abandon well No. 44-31. The Area Manager's order, dated April 10, 1990, placed well No. 44-31 within the SE¼ SE¼ sec. 31, T. 37 N., R. 67 W., Converse County, Wyoming, on Federal lease WYW 9092A.

The Area Manager's order referred to prior correspondence of BLM, dated August 18, 1988, requiring appellant to submit a notice of intent to abandon well No. 44-31. Appellant's response had been to recommend that this well be held "in a temporarily abandoned category" awaiting development of a waterflood unit for the Kaye Field (Letter to Wm. H. Martimer, Platte River Resource Area, Aug. 26, 1988). Appellant stated that such unit was then under study by the operator and working interest owners. Well No. 44-31
was within the unit boundary, appellant noted, and could be considered a service well. 1/ The Area Manager's order of April 10, 1990, found that
no waterflood unit had yet been proposed and that no action had been taken to use the well for any beneficial purpose.

The State Office decision of July 6, 1990, explained that well No. 44-31 had produced until 1976 and ever since had remained in a temporarily abandoned status. The decision also recounted appellant's efforts
to convert this well into a water injection well for a secondary unit.

1/ This response also notified the Area Manager that in July 1987 appellant had filed a petition in bankruptcy. Subsequent pleadings indicate that in January 1989 appellant's creditors approved a plan of reorganization and that appellant has henceforth operated pursuant to this plan.
The Bankruptcy Code provides at 11 U.S.C. § 362(a) (1988) that a petition
in bankruptcy operates as a stay of the commencement or continuation of an administrative proceeding against the debtor that was or could have been commenced before the commencement of the case under Title 11.

An exception to this automatic stay provision is set forth at 11 U.S.C. § 362(b)(4) (1988) for actions or proceedings by a governmental unit to enforce its police or regulatory power. The legislative history of this section makes clear that "where a governmental unit is suing a debtor to prevent or stop violation of fraud, environmental protection, consumer protection, safety, or similar police or regulatory laws, or attempting to fix damages for violation of such a law, the action or proceeding is not stayed under the automatic stay." S. Rep. No. 989, 98th Cong., 2d Sess. 52, reprinted in 1978 U.S.C.C.A.N. 5787, 5838 (emphasis added.); H.R. Rep. No. 595, 95th Cong., 2d Sess. 343, reprinted in 1978 U.S.C.C.A.N. 6299. Penn Terra Ltd. v. Department of Environmental Resources, 733 F.2d 267, 272 (3rd Cir. 1984).

Appellant does not contend that the automatic stay of 11 U.S.C. § 362(a) (1988) applies in the instant case, but it is clear that if it does, BLM's action, whose aim is to prevent harm to those formations penetrated by well No. 44-31, would qualify for an exception to the stay. See Gannon v. Mobil Oil Co., 573 F.2d 1158 (10th Cir. 1978) ("The authority of the Oklahoma Corporation Commission, under the governing statutes, has been consistently recognized in the rule making area to be that of promulgating rules requiring adequate and proper plugging and abandonment of an oil and gas well under the state's police power in order to prevent waste and pollution and to provide for the safety of the public generally") (emphasis added).

The deciding factor in this case, the State Office held, is that unitization of the Kaye Field has not occurred. The State Office had contacted the proposed unit operator, GLG Energy, which reported that although this field looked like a good candidate for unitization, economics would not allow for unit formation at this time (Decision at 2). No timetable for proceeding with unitization of the field was forthcoming.

BLM's decision further noted that proper plugging at this time would stop and/or prevent any future environmental problems in the well bore. Appellant's participation in the unit would be unaffected, the State Office found, because appellant held operating rights for that portion of the lease and because other producing wells were present on the lease. Finally, if and when a unit was formed, re-entry of well No. 44-31 would not greatly increase the cost of unit development, as extensive new drilling would be planned for the unit, the State Office concluded (Decision at 2).

In its notice of appeal, appellant contends that BLM incorrectly stated that ERC's unit participation would be unaffected by plugging well No. 44-31. Appellant states that it has sold all its right, title, and interest in the Kaye Field and other producing leases and has retained an ownership interest only in well No. 44-31. It argues that plugging this well would cause it to lose any economic benefit that would be gained when the unit is formed and the well is used as a water injector.

In its statement of reasons, appellant says that it drilled numerous wells at great risk in search of oil and gas and that well No. 44-31 is one of the few remaining properties in which it may have a residual economic benefit. It notes that, during 1987 the waterflood program was "essentially approved" by a majority of working interest owners, but oil prices, operator changes, and other factors caused delay in implementation. To deprive ERC Industries of any economic gain from the program by requiring the well to be plugged and abandoned at this time is "unjust, unreasonable, and damaging to [a company which] is attempting to survive in a depressed industry that is perhaps beginning to see some opportunities" (Statement of Reasons, Aug. 13, 1992, at 2).

The record shows that BLM first sought the plugging and abandonment of well No. 44-31 by letter dated April 25, 1978, to Inter-American Petroleum Corporation. Inter-American had drilled this well in 1973. Thereafter, the company was sold to Kenai Oil and Gas, Inc., which later merged with appellant. During the next ten years, the record shows, BLM unsuccessfully approached General Atlantic Energy Corporation, the lessee here, to plug and abandon the well. By letter of August 18, 1988, BLM ordered both appellant and General Atlantic to state who was operating this well and further ordered the operator to submit a notice of intent to abandon. 2/

2/ A BLM decision of Mar. 19, 1985, had identified Kenai Oil and Gas, Inc., as the holder of 100 percent of the operating rights in the SE¼ sec. 31 from the surface down to the base of the Teapot formation.

[1] Regulation 43 CFR 3162.3-4 controls resolution of this dispute. This regulation states in part:

> (a) The operator shall promptly plug and abandon, in accordance with a plan first approved in writing or prescribed by the authorized officer, each newly completed or recompleted well in which oil or gas is not encountered in paying quantities or which, after being completed as a producing well, is demonstrated to the satisfaction of the authorized officer to be no longer capable of producing oil or gas in paying quantities, unless the authorized officer shall approve the use of the well as a service well for injection to recover additional oil or gas or for subsurface disposal of produced water. In the case of a newly drilled or recompleted well, the approval to abandon may be written or oral with written confirmation.
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> (c) No well may be temporarily abandoned for more than 30 days without the prior approval of the authorized officer. The authorized officer may authorize a delay in the permanent abandonment of a well for a period of 12 months. When justified by the operator, the authorized officer may authorize additional delays, no one of which may exceed an additional 12 months. [Emphasis added.]

Paragraph (c) above clearly contemplates that an operator may delay the plugging and abandonment of a well for as long as 12 months with BLM's prior approval. At the conclusion of such 12-month period, a further delay may be authorized by the agency when justified. No limit to the number of such authorized delays is imposed by the regulation.

Authorization for such delays is, however, dependent upon the operator showing justification for this action. In the instant case, the record shows that BLM first sought the plugging and abandonment of well No. 44-31 in April 1978, approximately 2 years after the well stopped producing. No action resulted. Again, in 1988 the agency renewed its efforts and learned by correspondence dated August 26, 1988, that a waterflood program was under study. Some 4 years later, the program has yet to be implemented.

We believe the record demonstrates that BLM has given appellant ample time to implement its waterflood program. In the absence of progress here, BLM acted within its discretion in ordering appellant to file its notice of intent to plug and abandon well No. 44-31. No timetable for appellant's waterflood program is provided by the unit operator, and appellant is similarly silent. Appellant awaits improved economics, but in the meantime a risk of environmental harm persists. See Sheridan Oil Co. v. Wall, 187 Okla. 398, 103 P.2d 507 (1940) (improperly plugged well caused harm to neighbor's water supply).

Our decision to affirm BLM's action of July 6, 1990, finds support in prior case law of this Board. In Viking Exploration, Inc., 119 IBLA

73 (1991), the Board found that BLM had allowed Viking a reasonable time, 18 months after initial notice, to plug or produce its well. In that case, as here, appellant sought to delay abandonment awaiting improved economics. 3/ In the instant case, over 18 months have elapsed between the Area Manager's orders of August 18, 1988, and April 10, 1990, and well No. 44-31 is no closer to abandonment than it was when it ceased production in 1976. BLM's decision of July 6, 1990, is well within the parameters present in Viking.

Assuming, arguendo, that BLM has misstated appellant's participation in the unit or operating rights in the lease, any such error is insufficient to reverse the State Office decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

David L. Hughes
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

3/ In Viking, the appellant sought to delay abandonment while it looked for a partner to share the costs of working over its well.